Supreme Court, U.S.
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In The

Supreme Court of the United States

GAIL WILSON,

Petitioner,

v.

SAN LUIS OBISPO COUNTY DEMOCRATIC CENTRAL COMMITTEE AND STEWART JENKINS,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of California, Second Appellate District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the County Democratic Central Committee as a group may deny the constitutional rights to free speech, association and due process to a member of the committee elected pursuant to California Elections Code, sections 7200 et seq.

2. Whether California Elections Code, sections 7200 et seq. may constitutionally limit a County Democratic Central Committee's authority to add non-elected members and/or remove elected members after this Court's ruling in *Eu vs. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989).

LIST OF PARTIES

The caption of the case in this Court contains the names of all the parties.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	vi
INTRODUCTION	1
OPINIONS BELOW	5
JURISDICTION	6
CONSTITUTIONAL PROVISIONS, STATUTES, TREATISES, ORDINANCES AND REGULATIONS INVOLVED	6
STATEMENT OF THE CASE	6
A. FACTUAL BACKGROUND	6
1. The Organization Of County Central Committees	7
a. Elected Members	7
b. Ex Officio Members	8
c. Removal Is Limited	8
d. Democratic Party Governing Documents Do Not Enable County Central Committees	9
2. Petitioner And The San Luis Obispo County Democratic Central Committee	9
a. Additional Members Added	9
b. Disagreements Regarding The Additional Classifications	10
c. Petitioner's Removal	10

TABLE OF CONTENTS – Continued

Page

B. PROCEEDINGS BELOW 12

1. Trial Court And Appeal 12

2. Petitioner Is Elected To Another Term And Removed Again 13

3. California Democratic Party's Amicus Brief 13

4. The California Court Of Appeal, Second District Decision 14

a. Petition For Rehearing Denied 15

b. Publication Of The Decision 15

5. Petition For Review To The California Supreme Court Denied 15

REASONS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI 16

A. THIS COURT HAS NOT DEFINITIVELY DETERMINED THAT A POLITICAL PARTY'S CONSTITUTIONALLY STATE-REGULATED ACTIVITIES CAN CONSTITUTE STATE ACTION 16

B. THE ACTIONS OF THE DEMOCRATIC CENTRAL COMMITTEE ADDING MEMBERS TO ITS COMMITTEE CONTRARY TO THE CALIFORNIA ELECTIONS CODE AND ITS REMOVAL OF AN ELECTED MEMBER CONTRARY TO THE CALIFORNIA ELECTIONS CODE CONSTITUTES STATE ACTION 19

TABLE OF CONTENTS – Continued

Page

1. The deprivation Was Caused By The Exercise Of The Rights Conferred On The Committee By The State 20

   a. The Relationship Between The State And Political Parties Under The Elections Code Is A Shared Relationship .. 21

   b. The California Elections Code Enables The County Committees..... 21

   c. The Elections Code Prescribes A Democratic Structure..... 23

2. The Committee Can Be Fairly Stated To Be A State Actor Because It Has Obtained Significant Aid From The State In Its Election Process..... 23

C. THE MEMBERS' RIGHTS OF SUFFRAGE SHOULD ALSO BE CONSIDERED BY THIS COURT IN CONJUNCTION WITH THE INDIVIDUAL PARTY MEMBER'S RIGHTS OF FREE SPEECH AND ASSOCIATION 26

CONCLUSION 29

APPENDIX

Court of Appeal Decision .....App. 1

Court of Appeal Modification .....App. 26

Superior Court Decision .....App. 27

Supreme Court Petition for Review .....App. 40

Statutes and Constitutional Provisions.....App. 41

TABLE OF AUTHORITIES

Page

CASES

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) 25

California Democratic Party v. Jones, 530 U.S. 567 (2000) 16, 17

Communist Party v. Peek, 20 Cal.2d 536 (1942) 25

Eu v. San Francisco County Democratic Central Committee, 489 U.S. 214 (1989) ..... *passim*

Independent Progressive Party v. County Clerks, 31 Cal.2d 549 (1948) 25

Katz v. Fitzgerald, 152 Cal. 433 (1907) 25

Lebron v. National Road Passenger Corporation, 513 U.S. 374 (1995) 25

Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922 (1982) 3, 19, 20

Marchioro v. Chaney, 442 U.S. 191 (1979) ... 2, 20, 27, 28

Marsh v. Alabama, 326 U.S. 501 (1946) 25

Morse v. Republican Party of Virginia, 557 U.S. 186 (1996) 16, 24

Nixon v. Condon, 286 U.S. 73 (1932) 24

Reynolds v. Sims, 377 U.S. 533 (1964) 3, 26

Smith v. Allwright, 321 U.S. 649 (1944) 17, 24

Socialist Party v. Uhl, 155 Cal. 776 (1909) 25

Storer v. Brown, Secretary of State of California, 415 U.S. 724 (1973) 4, 23

TABLE OF AUTHORITIES – Continued

Page

Stout v. Democratic County Central Committee, 40 Cal.2d 91 (1952) 25

Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).....16

Terry v. Adams, 345 U.S. 461 (1953).....17, 24

Wilson v. San Luis Obispo Democratic Central Comm., 175 Cal.App.4th 489 (2009) 13, 14

STATUTES

California Elections Code Sections

300 7

5100 et seq.....6

7200 .....7, 19, 21

7201 7

7202 7

7203 7

7205 20

7206 8

7207 8

7210 .....8, 9

7212 .....8, 19

7213 .....8, 19

7214 .....8, 19

7215 .....8, 19

TABLE OF AUTHORITIES – Continued

Page

7225 7

7226 7

8000 et seq. 6

California Constitution

Article XX, Section 3 ..... 8, 25

United States Code

Title 28, Section 1257(a) 6

United States Constitution

First Amendment 1, 4, 27

Fourteenth Amendment 4, 24, 26

Attorney General Opinions

78 Ops. Cal. Atty. Gen. 285 (1995) 12

INTRODUCTION

Respondent San Luis Obispo County Democratic Central Committee (Committee) concedes it violated the California Elections Code when it added 22 additional members to the Committee after the general election over and above the 26 members permitted pursuant to the California Elections Code. Respondent Committee concedes it violated the California Elections Code when it revised its bylaws in order to effectuate the removal of Petitioner, an elected Committee member. It is undisputed Petitioner was removed from office as an elected Committee member without due process of the law because she exercised her free speech rights by continually asserting to the Respondents that they were violating California Elections Codes. The Respondents contend, and the state courts of California now seem to agree, that a political party committee has unfettered rights to violate its members' constitutional rights of free speech, association and due process notwithstanding the state election laws regulating those activities because a political committee is not bound by the California Elections Code and is not a state actor after this Court's ruling in *Eu v. San Francisco County Democratic Central Committee*, supra, 489 U.S. 214 wherein this Court invalidated several California Elections Code sections by holding that California's interest in maintaining a stable political system and protecting voters from confusion and undue influence were not sufficiently compelling for purposes of infringing on the First Amendment's

guarantee of free speech and association to justify the California Elections Code's provision forbidding the official governing bodies of political parties (state convention, state central committee and county central committees) to endorse candidates in the Democratic Party's primary and controlling certain internal aspects of the committees.

Petitioner seeks to be reinstated to the Committee on the grounds she was removed in violation of the California Elections Code, in violation of her constitutional rights of free speech and association, and in violation of the San Luis Obispo County voters' constitutional rights of suffrage. Petitioner also seeks to remove the members illegally added after the general election.

This Court has ruled that a state election law controlling the number of elected committee members is ***not*** a constitutional infringement on the right of political association – particularly in the situation such as in the present case where the committee has elected to be formed, governed and protected under the auspices of that state law. See *Marchioro v. Chaney*, 442 U.S. 191 (1979). The California state courts disagree with this Court and have inferentially ruled that the *Eu* case has overruled the *Marchioro* case even though this Court was very careful to distinguish the *Marchioro* case from the *Eu* case at 489 U.S. at 232 fn. 22. [App. 1, App. 27 and App. 40] In *Marchioro*, it seems fairly clear that this Court recognized that the elected members of a political committee have a constitutional right to not have the

votes electing them diluted by other members and nonmembers usurping the state election rules under which the committee as a whole was created. Nonetheless, this Court has also made it very clear over the years that any dilution of the weight of a citizen's vote is a constitutional infringement of the right of suffrage. See *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). The California state courts disagree with this Court by ruling in this case that a citizen's vote for a committee member has no weight and no constitutional protection – again relying on the *Eu* case.

This Court has also made it clear over the years that when government authority exercises control over an activity to such an extent that the activity's participants must be deemed to act with the authority of the government, those acts are subject to constitutional constraints. For example, see *Lugar v. Edmondson Oil Co. Inc.*, 457 U.S. 922 (1982). The California state courts disagree with this Court in the present case by ruling that in light of the *Eu* case, it is impermissible for the state court to protect the constitutional rights of a county elected central committee member because the Committee is not a state actor and to protect the constitutional rights of an elected member would infringe on the Committee's collective right of association.

Because of the delicate balance needed between respecting the state's interest in regulating the election process in order to preserve the integrity of the political process, the political parties' constitutional

rights of association and free speech guaranteed by the First and Fourteenth Amendment and the voters' constitutional right of suffrage under Article 1, §2 of the Fourteenth Amendment, this Court has made it clear that the law provides no litmus test or bright line separating permissible election restrictions from those that are unconstitutional infringements. See *Storer v. Brown*, 415 U.S. 724 (1973). However, in the instant case, the California courts have erroneously used the *Eu* case to be the "be-all and end-all" directive that ***any*** election regulation of a political county central committee does not pass constitutional muster and confers no constitutional rights on the beneficiaries of those regulations, to wit, the voters and the individual members elected to the committee.

The focus of this Petition is whether the violations of the Elections Code by Respondents constitute state action which would allow Petitioner to assert her constitutional rights guaranteed under the Fourteenth Amendment. This Court has addressed multiple issues regarding the internal workings of political parties and the constitutionality of election laws that regulate those internal workings. However, this Court has yet to determine whether any of the activities of a political party committee constitutionally regulated constitute state action for purposes of protecting its members from the infringement of their individual constitutional rights. Without guidance from this Court, the political committees throughout the State of California will now have the unfettered right to infringe on its members'

constitutional rights and will make the election of these members and the voters' choice of these members illusory.

OPINIONS BELOW

The decision of the California Court of Appeal, District Two, Division Six is reported at 175 Cal.App.4th 489. The opinion is reproduced in the Appendix at App. 1.

The decision of the California Court of Appeal to publish its opinion at the request of multiple amici curiae is not officially reported but can be located at 2009 Cal.App.LEXIS 1155. The certification to publish is reproduced in the Appendix at App. 26.

The October 14, 2009 denial of Petitioner's Petition for Review to the California Supreme Court is not officially reported but can be located at 2009 Cal.LEXIS 10673. The denial is reproduced in the Appendix at App. 40.

The May 5, 2008 state trial court's decision denying Petitioner's Petition for Writ of Mandamus is not reported and is reproduced in the Appendix at App. 27.

JURISDICTION

The judgment of the California Supreme Court denying the Petition for Review was entered on October 14, 2009. This Court has jurisdiction under 28 U.S.C. section 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES, TREATISES, ORDINANCES AND REGULATIONS INVOLVED

Relevant Constitutional Provisions, Treatises, Statutes, Ordinances and Regulations involved appear in the Appendix to the Petition at App. 52.

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

The backdrop of this case is California's political party system. Political parties "qualify" so that their candidates can participate in primary elections. California Elections Code §§5100 et seq. (procedures for qualification) and §§8000 et seq. (direct primaries).[1] The Democratic Party is one of four political parties recognized in the California Elections Code.

[1] All further references will be the California Elections Code.

All four of these parties are organized based on a central committee[2] structure; each having a state central committee and county central committees. Division 7 of the Elections Code describes the organizational structure for each of the four qualified political parties, including the means for selecting and electing members of central committees.

1. The Organization Of County Central Committees.

County central committees are at the core of this case; in particular, the Democratic Party county central committee. There are two classes of members for Democratic Party county committees; elected members and ex officio members. §§7200 et seq.

a. Elected Members.

Elected members are elected at each direct primary election. §7225. The number of elected members is determined by the election's official based on criteria such as the number of Assembly Districts. §§7200, 7201, 7202, 7203, 7226. In San Luis Obispo County, where there are fewer than five assembly districts, members are elected based on supervisorial districts. §7200.

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[2] See section 300 for definition of committee.

Each elected member shall take the oath of office specified in Section 3 of Article XX of the Constitution. §7210.

b. Ex Officio Members.

Ex officio members are derived from public offices. Section 7206 prescribes public officials or nominees for state senator, assembly, and House of Representatives in congress as ex officio members. Section 7207 further prescribes public officials or nominees for governor, lieutenant governor, secretary of state, controller, treasurer, attorney general, state board of equalization member and U.S. Senator as ex officio members.

c. Removal Is Limited.

The Elections Code specifies limited grounds for removal of county committee members: 1) affiliates with or registers with another party during the term of membership (§7215); 2) publicly advocates that the voters should not vote for the nominee of the party for any office (Id.); or 3) publicly gives support to or avows a preference for a candidate of another party or candidate who is opposed to a candidate nominated by the Democratic Party (Id.); incapacity or leaves the jurisdiction of the committee (§§7212 and 7214); failure to attend meetings. §7213. There is no other removal provision specified in the Elections Code for county committees.

d. Democratic Party Governing Documents Do Not Enable County Central Committees.

The California Democratic Party has no structure for county central committees. It has bylaws, but these bylaws pertain to the State Central Committee and do not enable county central committees nor do they describe membership, removal or organization of county central committees. (CT 638-682.)

2. Petitioner And The San Luis Obispo County Democratic Central Committee.

Petitioner Gail Wilson was elected to the Committee in the June 2006 direct primary. Pursuant to the Elections Code, in total, there were 22 members elected and 4 ex officio members. (CT 295-303.) The San Luis Obispo County Clerk administered Petitioner the oath of office pursuant to section 7210. (CT 33.)

a. Additional Members Added.

Shortly after the June 2006 primary, the Committee, over Petitioner's objection, adopted bylaws allowing for additional member classifications such as 1) members of the State Democratic Central committee resident in San Luis Obispo County, and 2) Presidents (or designee thereof) of volunteer Democratic clubs (Article III, Section 1). (CT 428.)

These additional classifications increased the number of members from 26 (22 elected plus 4 ex officio) to 48, for a total of 22 additional members. (See membership roster at CT 295-303.)

Petitioner believed (believes) that Committee membership is legally limited to elected and ex officio classifications as described in the Elections Code. (CT 372-374.) She repeatedly objected to the additional membership classifications, and later she repeatedly objected to some of these additional members being elected by the Committee to serve as delegates to the Democratic State Central Committee. (CT 372-374 and CT 492-494.)

b. Disagreements Regarding the Additional Classifications.

Committee leadership became sharply critical of Petitioner, particularly Recording Secretary Respondent Stewart Jenkins. (CT 587-588.) On January 10, 2007 the Committee voted to deny with finality Petitioner's challenge to the additional member classifications and her challenge to the election of delegates. (CT 105 and CT 366-368.) At the same meeting the Committee moved to remove Petitioner. (CT 104-106.)

c. Petitioner's Removal.

Petitioner's proposed removal was based on a bylaw provision that the Committee previously

adopted. (CT 176-177 and CT 427-432 (Article V.)) The provision stated in part: "Section 1: Members are expected to be . . . regular contributors to the substantial work of the Committee." Section 2: Members who are severely deficient in this requirement may be removed. (CT 427-432.) Proponents of Petitioner's removal contended that her repeated challenges to the Committee were contrary to the Committee's best interests and therefore she failed to contribute to the substantial work of the Committee. (CT 36-47 and CT 587-588.)

The Committee met on February 13, 2007 and voted to remove Petitioner. Before the meeting, the only information given to Petitioner regarding the charges was a petition for her removal (CT 176-177 and CT 583) and an e-mail from Respondent Jenkins (CT 587-588) addressed to the Committee membership. The petition for removal did not contain any factual allegations and the e-mail is a rhetorical piece that also does not contain specific allegations. The meeting to remove Petitioner consisted of an assortment of comments from members and others in attendance. (CT 36-47.)

A motion to remove a member must pass on a two-thirds vote. (CT 430 – Article IX, Section 2.) The motion passed by a vote of 22 to 10, with one abstention. (CT 51-52.) Among the persons voting against Petitioner were the "additional members" whose membership she challenged. (See roll call at

CT 49-52 and compare to membership roster at CT 295-303.)[3]

B. PROCEEDINGS BELOW

Petitioner filed a Petition for Writ of Mandamus and Prohibition in Pro Per on June 14, 2007 in the California Superior Court. (CT 5.) A First Amended Petition for Writ of Mandamus was filed on August 27, 2007, seeking reinstatement and invalidation of the additional member classifications. (CT 158.)

1. Trial Court And Appeal.

After briefing and two hearings, the trial court, on May 5, 2008, issued a written order denying the Petition for Writ of Mandamus. [App. 27-39.] The trial court's decision focused on the Committee's reliance on *Eu v. San Francisco County Democratic Central Committee*, supra, 489 U.S. 214. Petitioner appealed this order to the California Court of Appeal. (CT 788.) In her appeal Petitioner addressed her individual rights of free speech, association and due process. Although raised in the trial court, the trial court's final decision did not address the free speech issue.

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[3] It is interesting to note that after the *Eu* case, the California Attorney General's office issued a written opinion that a nonelected member of a committee did not have the right to vote. 78 Ops.Cal.Atty.Gen. 285 (1995).

2. Petitioner Is Elected To Another Term And Removed Again.

Petitioner was elected to the Committee a second time in the June 2008 primary. Shortly after her election she was removed once again. The basis of her removal was that she had filed an appeal of the trial court decision in this action. The Committee relied on a so-called "forfeiture" provision in its bylaws that stated a committee member forfeited membership if they file, or threatened to file, a lawsuit against the Committee. This bylaw provision was adopted by the Committee on January 10, 2007, the same day that removal proceedings were commenced against Petitioner. Petitioner then filed a second petition for writ of mandate (*Wilson v. San Luis Obispo County Democratic Central Committee*, Superior Court of the State of California, County of San Luis Obispo, case no. CV 081107). In order to address mootness concerns, Petitioner filed a Motion to Consider Additional Evidence on Appeal asking the court of appeal to take judicial notice of this second lawsuit, which it did. [See Appendix 8.]

3. California Democratic Party's Amicus Brief.

The California Democratic Party ("CDP") filed an Amicus Curiae brief. This brief asserted that the *Eu* decision conferred on the Committee the sole right to determine its governing structure and that the associational rights of county central committees were implicated. CDP also asserted that the "state actor"

principle does not apply and therefore county central committee members are not entitled to constitutional protections.

Petitioner's Reply to CDP's Amicus Curiae brief contended that neither the CDP nor the Committee spoke for the Democratic Party members. The CDP's position was not only antagonistic to the individual constitutional rights of persons elected to a county committee, it disregarded the party electorate who elected members into office.

4. The California Court Of Appeal, Second District Decision.

The California Court of Appeal, Second District Decision primarily relying on the *Eu* case, held that Petitioner failed to establish "state action" by committee and therefore she could not assert individual constitutional protections including free speech, association and due process. It also holds that she cannot rely on provisions of the Elections Code to limit the Committee's power to remove her, and to limit the Committee's power to create additional membership classifications (beyond elected and ex officio members) because the Elections Code provisions are unconstitutional to the extent they limit the composition of county central committees. *Wilson v San Luis Obispo County Democratic Central Committee*, 175 Cal.App.4th 489 (2009) – hereinafter referred to as Second District Decision. [App. 1 to App. 26]

a. Petition For Rehearing Denied.

Petitioner filed a Petition for Rehearing with the California Court of Appeal addressing misstated and omitted material facts. The facts stated in the Court of Appeal's decision were primarily focused on the personal conflict between Petitioner and the Committee's leadership. These facts are disconnected to the legal issues decided by the court and they are incomplete and disputed. Petitioner also asserted that the Court of Appeal's decision did not discuss the issue of voter rights; that is, the rights of the Democratic Party electorate affected by a county central committee's removal of an elected member and the dilution of voting power resulting from a county central committee's appointment of non-elected committee members. The Petition for Rehearing was denied. [App. 26]

b. Publication Of The Decision.

Initially the Second District Decision was unpublished. There were seven requests for publication by various amici and interested political parties. Based on these requests the Court of Appeal issued an order for publication. [App. 26]

5. Petition For Review To The California Supreme Court Denied

On October 14, 2009, the California Supreme Court summarily denied Petitioner's Petition for Review. [App. 40]

REASONS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI

A. THIS COURT HAS NOT DEFINITIVELY DETERMINED THAT A POLITICAL PARTY'S CONSTITUTIONALLY STATE-REGULATED ACTIVITIES CAN CONSTITUTE STATE ACTION.

Review is requested to address a political party's central committee *member's* constitutional rights to free speech, association and due process. The California Second District Court of Appeal in this case found as a matter of law that a Democratic county central committee is not a "state actor" subject to constitutional limitations and has unfettered rights to infringe upon what would otherwise be protected constitutional rights of its members. This Court has not definitively decided the issue of "state actor" in the context of a political party. Compare *Morse v. Republican Party of Virginia*, 517 U.S. 186 wherein it seems this Court may be significantly divided on the issue. Nonetheless, it is an important issue to all the States' election systems, not just California's, and should be reviewed by this Court.

As noted above, the Second District Decision was greatly influenced by the *Eu* decision. *Eu* is in a line of cases wherein this Court has addressed claims by political parties asserted against *the State* alleging that the State's regulation of its election system impinged on rights of association of *the party*. Others include *Tashjian v. Republican Party of Connecticut* (1986) 479 U.S. 208; *California Democratic Party v.*

Jones, 530 U.S. 567 (2000). The issues reflect a tug-of-war between political parties and the State; the State asserting control and the political party asserting associational independence.

The issues between Petitioner and the Committee align in a very different manner. Petitioner, in her capacity as a member of the Democratic Party and as an elected member of the Committee, is the holder of individual rights, and she asserts her rights as well as those of fellow members against the Committee. The *Eu* decision and the *Jones* decision expressly excluded individual claims from consideration. In *Jones* this Court excluded cases addressing violations of "some independent constitutional proscription" referring to *Smith v. Allwright*, 321 U.S. 649 (1944) and *Terry v. Adams*, 345 U.S. 461 (1953). *Democratic Party v. Jones*, supra, at pp. 573-574 and footnote 5. In *Eu* this Court stated that its decision was "not a case where intervention is necessary to prevent the derogation of the civil rights of party adherents" citing *Smith v. Allwright*, supra. *Eu v. San Francisco County Democratic Central Committee*, supra, at p. 232.

The *Eu* line of cases addresses limitations of state power to control political *parties*. Whereas, the *Terry* and *Smith* line of cases, including their "state actor" holdings, address the limitations of political parties to affect the rights and privileges of individual *members*.

The Second District Decision's heavy reliance on *Eu* raises a unique set of issues that this Court should address. The juxtaposition of the Democratic party's rights, the individual party member's rights and the voters' rights is a unique, but important, offshoot of the principles enunciated in *Eu* that this Court has the opportunity to address.

The California Court of Appeal Decision held that an elected member of a county central committee has no constitutionally protected rights of speech, association or due process because the committee is a private entity and the principle of "state actor" does not apply. A proper determination of these rights is important not only to address the impact of the Committee's actions against Petitioner, but more so to address whether political parties which take advantage of the statutory election process and statutory election protections promulgated by the state can infringe on the constitutional rights of free speech and association of their individually elected members.

The Court of Appeal's denial of individual constitutional rights, when considered in combination with the denial of Elections Code regulatory protection, means that those persons who control county central committees have the power to remove elected members, to add appointed members and to control party affairs; with no constitutional limitations on their actions. This has broad implications. It allows a committee the unrestrained opportunity to control party politics and it stifles the work of dissenters. This is an important opportunity for the court to

address the issue of State Actor in the context of a political party.

B. THE ACTIONS OF THE DEMOCRATIC CENTRAL COMMITTEE ADDING MEMBERS TO ITS COMMITTEE CONTRARY TO THE CALIFORNIA ELECTIONS CODE AND ITS REMOVAL OF AN ELECTED MEMBER CONTRARY TO THE CALIFORNIA ELECTIONS CODE CONSTITUTES STATE ACTION

Contrary to the Second District Decision, Petitioner submits that the Committee adding 22 additional members contrary to Sections 7200 et seq. and the Committee removing Petitioner from elected office contrary to Sections 7212-7215, under the pretext that she was not contributing to the Committee because she was complaining that the Committee was violating the law, constitute state action.

This Court has traditionally protected individuals whose Constitutional rights have been infringed by individuals or entities conducting activities that are controlled by the government to such an extent that the activity's participants must be deemed to act with the authority of the government.

This Court in *Eu* recognized that at least in California, the state "heavily regulates its political parties." 489 U.S. at 216. In *Lugar v. Edmondson Oil Co., Inc.*, supra, 457 U.S. 922, this court, in a case where a judgment creditor had taken advantage of state laws in procuring a writ of attachment which

was an area significantly regulated by the state, found the judgment creditor was a state actor even though not a public official because the government had exercised control over the debtor and had enabled the creditor to assert such control over the debtor. This Court articulated the test for determining state action which was never addressed by the California Court of Appeal in its decision in this case:

> "First, the deprivation must be caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the State or by a person for whom the state is responsible . . . "
>
> "Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State."

457 U.S. at 937.

1. The Deprivation Was Caused By The Exercise Of The Rights Conferred On The Committee By The State.

Section 7205 gives the Committee the option of controlling the election of its members. The Committee elected not to avail itself of section 7205 or avail itself of setting up its own central committee. See for example *Marchioro v. Chaney*, supra, 442 U.S. 191.

As such, it is undisputed the Committee's creation was under the auspices of the California Elections Code.

a. The Relationship Between The State And Political Parties Under The California Elections Code Is A Shared Relationship.

Under its current construct, the State, and the qualified political parties within it, form a shared relationship with the State delegating to political parties components of the election system and the political parties deferring to the State for an enabling structure for governance; particularly as to county central committees. The reality is that political parties could not function as they do without the State's enabling legislation and the State could not run its election system as it is currently structured without the political parties.

b. The California Elections Code Enables The County Committees.

As stated above, the California Democratic Party's governing documents do not enable county central committees. (CT 637-682.) The only source of enabling rules for county committees is the California Elections Code. §§7200 et seq. This indicates that the Democratic Party has deferred county central committee enabling authority to the State. This is expressly stated in the San Luis Obispo County

Democratic Party Central Committee bylaws. The preamble reads:

"We, the members of the San Luis Obispo County Democratic Central Committee, ***which is established by the State of California Elections Code that provides for the election, organization and function of this organization***, hereby adopt these bylaws in order to better serve the citizens of our county" . . . (CT 427) Emphasis added.

As the preamble to its bylaws makes clear, the Committee exists based on the authority of the Elections Code.

The Democratic Party's concession to Elections Code regulation is even evident from the *Eu* decision. The *Eu* decision came out of a major federal lawsuit filed against the State of California by the Democratic, Republican and Libertarian Parties, state central committees and several county central committees and individual members, addressing these parties' objections to numerous but specific provisions in the Elections Code. Yet, the Democratic Party, or any other party for that matter, did not include in its lawsuit a challenge to any of the Elections Code provisions regarding the formation, organization, operation and functions of county central committees. If the Elections Code's regulation of county committees was problematic, the Democratic Party would certainly have asserted that position in its lawsuit against the State.

One cannot simply assume that election laws are invalid, it requires close and individualized scrutiny. *Storer v. Brown*, 415 U.S. 724, 730-731 (1974)

c. The Elections Code Prescribes A Democratic Structure.

The Elections Code provisions regarding county central committees are authentically democratic in character. Committee members are either elected directly by party members in the primary, or they are nominees or incumbents of a publically elected office. The removal provisions are limited, so once elected into their position county committee members are safe from arbitrary removal that would be contrary to the wishes of their electors. It is a sound democratic form of governance and apparently one that the Democratic Party has in the past been willing to accept.

The Second District Decision would leave county committees with an unconventional form of governance amounting to no governance at all.

2. The Committee Can Be Fairly Stated To Be A State Actor Because It Has Obtained Significant Aid From The State In Its Election Process.

It is incongruous for the Committee to advocate the protection of the Democratic Party's associational rights on the one hand, and then to argue that one of

its individual party members has no such rights that are protected by the constitution on the other.

The authorities compel a finding that the Committee is a state actor for purposes of protecting individual rights of persons elected to the position of Committee party member.

> "The test is not whether the members of the Executive Committee are the representatives of the State in the strict sense in which an agent is the representative of his principal. The test is whether they are to be classified as representatives of the State to such an extent and in such a sense that the great restraints of the Constitution set limits to their action." *Nixon v. Condon* (1932) 286 U.S. 73, 88-89.

Nixon along with *Smith v. Allwright*, supra, and *Terry v. Adams*, supra, all held that political parties were state actors in order to protect individuals against acts of the party which constitute racial discrimination. *Morse v. Republican Party, supra,* 517 U.S. 186 found the Republican Party to be a state actor to address Fourteenth Amendment violations arising from the qualifications for delegates to the party's state convention. "State delegation to a party of the power to fix the qualifications of primary elections is delegation of a state function that may make the party's action the action of the State." Id. at p. 199.

In California the integration of political parties into the State's election process is recognized in the

numerous decisions including *Katz v. Fitzgerald*, 152 Cal. 433 (1907); *Socialist Party v. Uhl*, 155 Cal. 776 (1909); *Communist Party v. Peek*, 20 Cal.2d 536 (1942); *Independent Progressive Party v. County Clerks*, 31 Cal.2d 549 (1948); *Stout v. Democratic County Central Committee*, 40 Cal.2d 91 (1952).

Petitioner does not contend that an elected member of a county committee is a "public officer." Petitioner contends that county central committee members are entitled to constitutional protections even though they are not public officers.

In many private settings constitutional protections have been extended to individuals by this Court. See *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961) (private restaurant in space leased from City); *Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374 (1995) (Amtrak); *Marsh v. Alabama*, 326 U.S. 501 (1946). Even as a private entity, a county central committee can be a state actor because it has availed itself of the protections and governance of the State's Elections Code.

Finally, the most important fact compelling a finding of "state actor" is that county committee members are elected in a State-regulated public election and an oath of office is administered by a State official. This oath is prescribed by Cal. Const. Art. XX, section 3. A person taking the oath swears to "bear true faith and allegiance" to the Federal and State constitution. Petitioner took this oath as a condition precedent to her taking office. The

Committee's argument that they had the right to violate Petitioner's individual constitutional rights bears no faith to the sworn oath.

The Second District Decision would mean that all political party members who serve on county committees (and perhaps the State Central Committee too) have no constitutional protections as a matter of law. This not only impairs their individual freedoms, it jeopardizes their ability to carry out their duties without fear of retaliation. It is destructive to the democratic process.

Petitioner is asking this Court to grant this Petition in order to clearly state the constitutional protections afforded county central committee members or those similarly situated in political parties for not only her benefit, but more so for the benefit of other political party leaders across the Nation.

C. THE MEMBERS' RIGHTS OF SUFFRAGE SHOULD ALSO BE CONSIDERED BY THIS COURT IN CONJUNCTION WITH THE INDIVIDUAL PARTY MEMBER'S RIGHTS OF FREE SPEECH AND ASSOCIATION.

As previously stated, this Court has made it very clear over the years that any dilution of the weight of a citizen's vote is a constitutional infringement of the right of suffrage under Section 2 of the Fourteenth Amendment. See *Reynolds v. Sims*, supra, 377 U.S. 533, 555.

This case not only brings into play the constitutional rights of each Committee member but more importantly implicates the suffrage rights of each member voting for the Committee members during the election process. By the Committee adding 22 additional members contrary to the California Elections Code, the members' votes during the election have been reduced to nothing. The trial court indicated that the voters' rights were not implicated because Petitioner was not removed until after the election based on the pretext that she was not substantially contributing to the Committee. The trial court's decision begs the question. The members who voted to elect Petitioner did not consent to give members illegally added to the Committee the right to remove Petitioner even for cause. Clearly the members' votes for Petitioner were diluted.

This court in *Marchioro v. Chaney*, supra, 442 U.S. 191 held that a Washington state statute dictating the composition of a political party's state committee and barring the seating of additional committee members who were not elected did ***not*** violate the First Amendment rights of association of its party members. This Court reasoned that the legislative composition of the committee did not confer critical policy making authority on the state and therefore the regulation was reasonable. In addition, this Court indicated that nothing in the statute prevented the party from creating an entirely new committee or one composed of members of the existing elected state committee and the desired

additional members to perform the political functions that were intended to be performed by the elected state committee. Additionally, this Court stated that a committee which takes advantage of the state's election process should not complain that its right to govern itself has been substantially burdened by the statute. Even though this Court did not address the issue of voter dilution, it is clear this Court was of the opinion that if an election regulation does not impose an impermissible burden on the party or its members, any act in violation of those regulations which dilutes the votes will be considered an unconstitutional infringement on the right of suffrage. This case would be an opportunity for this Court to clear up any ambiguity between the *Marchioro* and *Eu* case as it relates to voter dilution.

The Second District Decision found that California's legislative attempt to require a democratic governance structure for county committees violated the Committee's constitutional right of association and that there was no compelling state interest to justify this impact. Again, the Second District Decision relied on the *Eu* case even though this Court distinguished it from the *Marchioro* case. In a conflict between State regulation and political party autonomy *Eu* held that political party associational rights protect the party from unjustified controls. The Second District Decision does not adequately recognize how the *Eu* principles should be applied in this case where a party member is, similar to the *Marchioro* case, doing nothing more than asserting

member rights against a party governing body arising out of the state's formation regulations of which the party governing body has elected to avail itself.

The Elections Code protects the associational rights of voting party members by assuring that county central committees are controlled by the party members who are elected. Party members are the primary holders of associational rights. County central committees are mere governing bodies that exist solely to facilitate organization. The committees' associational rights are secondary to the members' rights and the members' suffrage rights.

CONCLUSION

Petitioner respectfully requests this Court to grant this Petition for Writ of Certiorari.

Respectfully submitted,

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GAIL WILSON, Plaintiff and Appellant, v. SAN LUIS OBISPO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al., Defendants and Respondents.

No. B209293

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SIX

175 Cal. App. 4th 489

June 3, 2009, Filed

COUNSEL: Andre, Morris & Buttery and Dennis D. Law for Plaintiff and Appellant.

Saro G. Rizzo and Stewart D. Jenkins for Defendants and Respondents.

Olson, Hagel & Fishburn, Deborah B. Caplan, Lance H. Olson and Richard C. Miadich for California Democratic Party as Amicus Curiae on behalf of Defendants and Respondents.

JUDGES: Opinion by Yegan, Acting P. J., with Coffee and Perren, JJ., concurring.

OPINION BY: Yegan

OPINION

YEGAN, Acting P. J. – Gail Wilson appeals from the judgment denying her petition for writs of mandate and prohibition. Wilson was removed from

membership in the San Luis Obispo County Democratic Central Committee (Committee). She sought, inter alia, to compel the Committee and Stewart Jenkins (respondents) to reinstate her membership. Jenkins was a member of and recording secretary of the Committee. Appellant contends that (1) Committee bylaws authorizing her removal are invalid because they conflict with the Elections Code and are unconstitutionally vague; (2) her removal violated her First Amendment rights to free speech and political association; (3) her removal violated her constitutional right to procedural due process and her common law right to fair procedure; and (4) Committee bylaws unlawfully expanded the membership to include persons who are not statutorily authorized to become members. We affirm.

Background

In March 2006 appellant filed nomination papers as an incumbent candidate for the office of Committee member. On June 6, 2006, appellant "was appointed in lieu of election to the office of committee member . . . for a term expiring June 30, 2008." (Capitalization omitted.) Appellant's name was not printed on the Democratic Party's ballot because the number of candidates nominated for election to the Committee did not exceed the number of openings on the Committee. (Elec. Code, § 7228.)[1]

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[1] All statutory references are to the Elections Code.

Appellant frequently complained that the Committee was unlawfully constituted to the extent it included persons who were not statutorily authorized to become members. (*See* §§ 7200, 7206-7207, 7211) The Committee bylaws expanded the statutorily authorized membership to include the following: (1) "The Chair(s) of the Assembly District Committee(s) which include any portion of San Luis Obispo County, and the Regional Director(s) of the State Party whose region(s) includes any portion of San Luis Obispo County"; (2) "Members of the State Democratic Central Committee resident in this county[;]" and (3) "Presidents (or designee thereof) of volunteer Democratic clubs in this county which are chartered by this Committee."

Shortly before the November 2006 general election, appellant filed a complaint with the San Luis Obispo County District Attorney's Office. The nature of this complaint is disputed. Appellant claimed that the complaint concerned Jenkins's alleged violation of section 20201, which makes it unlawful to solicit funds for the use of a political party without that party's written consent. Jenkins claimed that appellant had accused the Committee of violating the Elections Code. The trial court's written ruling states that appellant had "apparently made a complaint to the District Attorney's office regarding misconduct by the Central Committee and Jenkins."

As a result of appellant's complaint, the Economic Crime Unit of the District Attorney's Office contacted Debra Broner, the Committee chairperson.

She "was advised that the District Attorney's Office was investigating a complaint that the [Committee] included unlawful members and chartering of Democratic organizations." Broner alleged that, "for at least two days, on or about Wednesday and Thursday right before the General Election," she "was compelled" to "gather and present documents that had previously been circulated with all of the committee [members], including [appellant]." The documents supported the legality of the Committee membership.

According to Broner, appellant's complaint impeded the Committee's campaign during the general election: "The interference [appellant's] timing caused with the conduct of the election campaign by the [Committee] was severe. The impact was not limited to this county. I was constrained to contact the Party's Regional Director, and the State Chairman's office. There was great concern that an unfounded investigation, triggered so close to the General Election clearly would interfere with the conduct of the campaign in our county, and close statewide campaigns. . . . The District Attorney's Office found no basis for taking action, but the delay impeded the [Committee's] campaign."

Broner declared that, after the District Attorney's investigation, Committee "members recognized how gravely the unfounded complaint had undermined the substantial work of the committee. Members expressed an understanding that these kinds of unfounded complaints from a committee member would continue to under-mine [*sic*] the work of the

committee through the critical 2008 Presidential campaign." Accordingly, 22 members signed a motion to remove appellant from office for failing "to contribute to the substantial work of the Committee."

The motion was authorized by the Committee's bylaws. Section 1 of Article V of the bylaws provides: "Members are expected to be regular in attendance at meetings and regular contributors to the substantial work of the Committee." Section 2 of Article V provides: "Members who are severely deficient in this requirement may be removed according to Article VI and Article IX." Article IX requires that a removal motion must first be presented at a regular meeting of the Committee. "At the next regular meeting . . . , the . . . member shall be given an opportunity to answer the charges and confront the persons making the charges." A two-thirds vote of the Committee is necessary to remove a member.

The motion to remove appellant was formally made at a meeting of the Committee on January 10, 2007, and a copy of the motion was given to her at that time. The motion was debated at the next regularly scheduled meeting on February 13, 2007. Committee members spoke in favor of and against the motion. Appellant spoke in her own defense.

Cheryl Conway, one of the members who spoke in favor of the motion, stated as follows: "[Appellant] poisons the well with each new member of the committee by telling them at the beginning of their association with us that they are illegal and

unethical. In the last seven or eight months, the messages have escalated in frequency and fervor. Each seemingly containing the implicit threat the member's participation will subject them to jail time and financial fines. This is not supporting the substantial work of the committee. In fact, it's undermining it at every turn. I have personally witnessed [appellant] telling out of the area dignitaries that the committee is unethical and illegal because we, by virtue of our bylaws and statewide bylaws, have allowed our membership legally to be more expansive and inclusive of our communities. [Appellant] is poisoning the well of our ability to bring in well-known statewide candidates to assist in fund raising because of her increasingly threatening messages to them. She has even sent an e-mail message to Jack O'Connell's office . . . that his representative, Mike Hyle, is illegally a member our . . . county committee. She has recently begun to make clear that her threats are personally directed to one of our members, sending out e-mails about irrelevant issues and spewing vindictive remarks. . . . For many years, members have been trying to work with [appellant] and provide her with the information that it would take to convince her that [her] interpretation is wrong and that the continually escalating behaviors are not conducive to strong committee, enabling us to turn [San Luis Obispo County] blue. In fact, she has recently reported us, to the [San Luis Obispo] County District Attorney's office right before the election cycle, and the state and national parties. She has told

our former chair that she will never give up this quest, no matter what."

At the end of the debate, a vote was taken. Twenty-two members voted in favor of the motion, ten members voted against it, and one member abstained. The chairperson "declared the motion to remove [appellant] from Membership on the Committee had passed."

Appellant filed a petition for a writ of mandate to compel respondents to reinstate her as a member of the Committee and "to remove as Committee Members ... all persons not duly elected under the California Elections Code or serving as ex officio members pursuant to [sections] 7206 and 7211." Appellant also sought a writ of prohibition precluding respondents from removing her from office, "once she has been reinstated," for any reason other tha[n] those enumerated in [the Elections Code] and "to preclude Respondents from selecting new members except pursuant to [the Elections Code]." The trial court denied the petition in a nine-page ruling.

Mootness

(1) Because appellant's term of office expired on June 30, 2008, we cannot reinstate her to the office of Committee member. Therefore, the portion of this appeal relating to her removal from office is moot. "An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the

appellant effective relief. [Citations.]" (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404 [81 Cal. Rptr. 3d 747].)

(2) We exercise our discretion to consider the removal issues pursuant to the principle that, "if an appeal is technically moot, but 'there may be a recurrence of the same controversy between the parties and the parties have fully litigated the issues,' a reviewing court may in its discretion reach the merits of the appeal. [Citation.]" (*City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal. App. 4th 455, 480 [81 Cal. Rptr. 3d 72].) The controversy between the parties has already recurred. Pursuant to rule 8.252(c) of the California Rules of Court, we granted appellant's motion to take additional documentary evidence on appeal consisting of (1) a certificate of election showing that, on June 3, 2008, appellant was elected to the office of Committee member for a term expiring on June 30, 2010; and (2) appellant's petition for writ of mandate, filed on December 18, 2008, seeking reinstatement of her membership after the Committee had allegedly informed her that "she had forfeited her Office as Committee member and . . . would be prohibited from participating in Committee meetings." Many of the issues raised in appellant's petition are similar to those raised in this appeal.

We also exercise our discretion to consider the removal issues pursuant to the following principle: "'"[I]f a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even

though an event occurring during its pendency would normally render the matter moot." [Citation.]' " (*Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 172 [126 Cal. Rptr. 2d 727, 56 P.3d 1029].) The removal issues presented by this case are of broad public interest and have already recurred.

Discussion

I *Standard of Review*

"When reviewing a trial court's ruling on a petition for traditional writ of mandate, we review any findings under the substantial evidence standard." (*Kurz v. Federation of Pétanque U.S.A.* (2006) 146 Cal.App.4th 136, 144 [52 Cal. Rptr. 3d 776].) "Where, as here, a 'purely legal question' is at issue, courts 'exercise independent judgment. . . .' [Citation.]" (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109 [61 Cal. Rptr. 2d 134, 931 P.2d 312].)

II *Removal Clause: Invalidity Based on Conflict with Elections Code*

Appellant contends that the removal clause of the bylaws is invalid because the Elections Code does not authorize the Committee to adopt rules regulating the removal of its members. Appellant notes that section 7241, subdivision (a), provides that a Democratic Party county central committee "may make rules and regulations providing . . . [¶] [h]ow officers of the committee may be removed," not how members may be removed.

Appellant further contends that the removal clause is invalid because it establishes grounds for removal not mentioned in sections 7213 and 7215, the only sections of the Elections Code providing for the removal of members of a Democratic Party county central committee. Section 7213 provides: "Any member of a committee, other than an ex officio member, who misses more than three consecutive regularly called meetings may be removed by a vote of the committee concerned, unless his or her absence is caused by illness or temporary absence from the county on the date of the meeting." Section 7215 provides: "A committee may remove any member, other than an ex officio member, who during his or her term of membership affiliates with, or registers as a member of another party, who publicly advocates that the voters should not vote for the nominee of this party for any office, or who gives support or avows a preference for a candidate of another party or candidate who is opposed to a candidate nominated by this party."

The controlling authority is *Eu v. San Francisco Democratic Comm.* (1989) 489 U.S. 214 [103 L.Ed.2d 271, 109 S.Ct. 1013] (*Eu*). In *Eu* the Supreme Court concluded that certain provisions of the Elections Code are unconstitutional because they "burden the First Amendment rights of political parties and their members without serving a compelling state interest." (489 U.S. at p. 233.) The unconstitutional provisions "prescribe[ ] the composition of state central committees, limit[ ] the committee chairs' term[ ] of

office, and designat[e] that the chair rotate between residents of northern and southern California. . . ." (*Id.*, at p. 220.) The court reasoned that these provisions "directly implicate the [First Amendment] associational rights of political parties and their members" because they limit "a political party's discretion in how to organize itself, conduct its affairs, and select its leaders." (*Id.*, at pp. 229-230.) Although the provisions in question concerned the state central committee, the *Eu* court made clear that its reasoning also applied to county central committees: "By requiring parties to establish official governing bodies at the county level, California prevents the political parties from governing themselves with the structure they think best." (*Id.*, at p. 230, fn. omitted.)

(3) The *Eu* court observed, "A State indisputably has a compelling interest in preserving the integrity of its election process. [Citation.] Toward that end, a State may enact laws that interfere with a party's internal affairs when necessary to ensure that elections are fair and honest." (*Eu, supra,* 489 U.S. at p. 231.) The court determined that the State had failed to establish the requisite compelling state interest because it had "not shown that its regulation of internal party governance is necessary to the integrity of the electoral process." (*Id.*, 489 U.S. at p. 232.) In sum, the court declared, "a State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is orderly and fair. Because California has made no such showing here, the

challenged laws cannot be upheld." (*Id.*, at p. 233, fn. omitted.)

(4) Assuming for purposes of discussion that the Elections Code does not authorize a county central committee to remove a member on grounds other than those specified in the code, appellant has failed to show that this restriction "is necessary to ensure an election that is orderly and fair."[2] (*Eu, supra*, 489 U.S. at p. 233.) Appellant argues that "[t]he Elections Code necessarily limits the power to remove persons who are publicly elected [to county central committees] in order to preserve the democratic process. . . ." Appellant was not "publicly elected," since her name did not appear on the Democratic ballot. She "was appointed in lieu of election to the office of committee member." (Capitalization omitted.) In any event, preserving "the democratic process" in internal party affairs is not a compelling state interest. The *Eu* court rejected a similar argument "that the challenged laws serve a compelling 'interest in the "democratic management of the political party's internal affairs."'" (*Eu, supra*, 489 U.S. at p. 232.) The court explained that "the State has no interest in 'protect[ing] the integrity of the party against the Party itself.' [Citation.]" (*Ibid.*)

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[2] In 1994, five years after the *Eu* decision, the entire Elections Code was repealed and reenacted with new numbering. (Stats. 1994, ch. 920, §§ 1 & 2, p. 4690.) We do not consider the impact, if any, of this repeal and reenactment on statutory construction.

Appellant further argues: "The state has a significant interest in having a uniform set of removal standards applicable to all county committees." But appellant does not show that such uniformity is necessary to the integrity of the electoral process. If it were necessary, the Legislature would have imposed uniform removal standards on all political parties. But no such uniformity exists. For example, section 7855, which applies to Peace and Freedom Party county central committees, authorizes the removal of a committee member for a violation of "the bylaws or constitution of the committee."[3] If section 7855 had applied to the Democratic Party, it would have authorized the removal of appellant for violating the bylaw requiring members to be "regular contributors to the substantial work of the Committee."

(5) Appellant contends that, irrespective of *Eu*, the Elections Code prevails over the bylaws because of the following statement in the bylaws' preamble: "The provisions of the Elections Code shall control in . . . case of any conflict between that Code and these bylaws." But the Committee members who adopted

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[3] Section 7855 provides: "A committee may remove any elected or appointed member, who during the term of membership, affiliates with or registers as a member of another political party, publicly advocates that the voters should not vote for the nominee of the party for any office, publicly gives support to or avows a preference for a candidate of another party or candidate who is opposed to a candidate nominated by this party, *or has violated the bylaws or constitution of the committee.*" (Italics added.)

the bylaws could not have intended that a valid bylaw would be superseded by Elections Code provisions that unconstitutionally burdened their First Amendment rights. The only reasonable interpretation of the preamble is that conflicting provisions of the Elections Code shall control to the extent they are constitutional. "Bylaws must '"be given a reasonable construction and, when reasonably susceptible thereof, they should be given a construction which will sustain their validity. . . ."' [Citation.]" (*Sanchez v. Grain Growers Assn.* (1981) 126 Cal.App.3d 665, 672 [179 Cal. Rptr. 459].)

Green Party of California v. Jones (1995) 31 Cal.App.4th 747 [37 Cal. Rptr. 2d 406], is distinguishable. In that case the court concluded that the Elections Code prevailed over two conflicting rules of the Green Party (the primary closure and affirmative vote rules) regulating primary elections for partisan offices.[4] Unlike the situation here, the conflicting rules did not pertain solely to a political party's internal affairs, i.e., the membership of a local

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[4] "The primary closure rule provides . . . that the party convention will decide which, if any, statewide partisan offices the party will contest and the county councils will decide which local partisan offices to contest. Lacking approval, no candidates may submit Green Party nomination papers for the office." (*Green Party of California v. Jones, supra*, 31 Cal.App.4th at p. 750.) "The affirmative vote rule, as modified by the trial court, requires the Secretary of State to include on the Green Party primary election ballot the category none-of-the-above and to deny certification as nominee to any person who fails to receive more votes than cast for that category." (*Id.*, at p. 752.)

governing body. Accordingly, the removal clause of the bylaws is not invalid even if it conflicts with the Elections Code.

III *Removal Clause: Invalidity Based on Vagueness*

(6) Appellant contends that the removal clause is unconstitutionally vague. "Vagueness doctrine is an outgrowth not of the First Amendment, but of the Due Process Clause of the Fifth Amendment." (*United States v. Williams* (2008) 553 U.S. ___ [170 L.Ed.2d 650, 128 S.Ct. 1830, 1845].) "[T]he underlying concern is the core due process requirement of adequate *notice.*" (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115, 60 Cal.Rptr.2d 277, 929 P.2d 596.) "Only those actions that may fairly be attributed to the state . . . are subject to due process protections. [Citations.]" (*Coleman v. Department of Personnel Administration* (1991) 52 Cal.3d 1102, 1112 [278 Cal. Rptr. 346, 805 P.2d 300].) The state action requirement applies to due process protections under both the federal and state constitutions. (*Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, 366-367 [113 Cal. Rptr. 449, 521 P.2d 441].)

(7) We reject appellant's vagueness claim because she has failed to show that the state action requirement was satisfied. Appellant acknowledges that "a political party is a private organization." A political party's county central committee does not perform any governmental functions, and membership in the committee is not a public office. (*Moore v.*

Panish (1982) 32 Cal.3d 535, 544-546 [186 Cal. Rptr. 475, 652 P.2d 32].) "A public office requires . . . the delegation to the office of some portion of the sovereign functions of government, either legislative, executive or judicial. [Citations.] Party county central committee members do not exercise any sovereign powers of government. [Citations.] The county committee is charged with conducting the party's political campaigns under the direction of the state party organization. [Citation.] Though such functions may be considered beneficial to the public insofar as they promote the party system adopted by the state, it is the interplay of the parties within an established framework rather than the specific campaign activities of the individual parties which benefits the public. The functions of party committee members remain those of their particular political party and do not involve the exercise of the sovereign power of the public. [Citation.] Thus, the courts have recognized that party county central committee membership is in reality an office of a political party. [Citation.]" (*Id.*, at p. 545, fn. omitted.)

Smith v. Allwright (1944) 321 U.S. 649 [88 L.Ed. 987, 64 S.Ct. 757], and *Terry v. Adams* (1953) 345 U.S. 461 [97 L.Ed. 1152, 73 S.Ct. 809], are distinguishable. Both cases involved political party rules excluding African-Americans from voting in primary elections to select nominees for a general election. In *California Democratic Party v. Jones* (2000) 530 U.S. 567, 573 [147 L.Ed.2d 502, 120 S.Ct. 2402], the Supreme Court observed: "In *Allwright,* we invalidated

the Texas Democratic Party's rule limiting participation in its primary to whites; in *Terry,* we invalidated the same rule promulgated by the Jaybird Democratic Association, a 'self-governing voluntary club,' [citation]. These cases held only that, when a State prescribes an election process that gives a special role to political parties, it 'endorses, adopts and enforces the discrimination against Negroes' that the parties (or, in the case of the Jaybird Democratic Association, organizations that are 'part and parcel' of the parties, [citation]) bring into the process – so that the parties' discriminatory action becomes state action under the Fifteenth Amendment. [Citations.]" No such racial discrimination occurred here.

IV *Right to Free Speech and Political Association*

Appellant contends that her removal from the Committee violated her First Amendment right to free speech because her "vigorous advocacy was the primary basis of her removal." "By retaliating for speech it disagreed with, the [Committee] effectively censored [appellant] for speaking her mind." Appellant further contends that her removal violated her First Amendment right to political association.

(8) The rights to free speech and political association are "protected against federal encroachment by the First Amendment [and] are entitled under the Fourteenth Amendment to the same protection from infringement by the States. [Citation.]" (*Mine Workers v. Illinois Bar Assn.* (1967) 389 U.S. 217, 222,

fn. 4 [19 L.Ed.2d 426, 88 S.Ct. 353]; *see* also *Hudgens v. NLRB* (1976) 424 U.S. 507, 513 [47 L.Ed.2d 196, 96 S.Ct. 1029] ["It is, of course, a commonplace that the constitutional guarantee of free speech is a guarantee only against abridgment by government, federal or state"].) We reject appellant's First Amendment claim because she has failed to show that the state action requirement was satisfied. (*See* the discussion in part III above.)

V *Constitutional Right to Procedural Due Process and Common Law Right to Fair Procedure*

Appellant contends that her removal from the Committee violated her right to procedural due process under the federal and state constitutions. Once again, we reject her claim for failure to show that the state action requirement was satisfied. (*See Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 631-632 [43 Cal. Rptr. 2d 774].)

(9) Appellant also contends that she was denied her common law right to fair procedure. "'California courts have long recognized a common law right to fair procedure protecting individuals from arbitrary exclusion or expulsion from private organizations which control important economic interests.' [Citation.] Such a private organization's actions must be both substantively rational and procedurally fair. [Citation.] What constitutes a fair procedure is not fixed or judicially prescribed. '[T]he associations themselves should retain the initial and primary

responsibility for devising a method which provides an applicant adequate notice of the "charges" against him and a reasonable opportunity to respond.'" (*Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1445 [282 Cal. Rptr. 819].) "To be informed of the charges, the proposed disciplinary action, and an opportunity in some manner to present countervailing evidence may satisfy the twin due process requirements of being substantively rational and procedurally fair, as opposed to a full blown adversarial process with the right to counsel and cross-examination. Under some circumstances, for example, a mere written response may be deemed fair, as opposed to a formal hearing. [Citation.]" (*Kurz v. Federation of Petanque U.S.A., supra,* 146 Cal.App.4th at p. 150, fn. omitted.)

(10) The common law right to fair procedure arguably does not apply here because appellant's removal from the Committee had no impact on her economic interests. "The common law right to fair procedure protects an individual from arbitrary exclusion or expulsion . . . where the exclusion or expulsion has substantial adverse economic ramifications. [Citation.]" (*Kim v. Southern Sierra Council Boy Scouts of America* (2004) 117 Cal.App.4th 743, 746 [11 Cal. Rptr. 3d 911]; *see* also *Potvin v. Metropolitan Life Ins. Co.* (2000) 22 Cal.4th 1060, 1071 [95 Cal. Rptr. 2d 496, 997 P.2d 1153] [an "insurer wishing to remove a doctor from one of its preferred provider lists must comply with the common law right to fair

procedure" only when the removal will affect "an important, substantial economic interest"].)

On the other hand, an argument may be made that the common law right to fair procedure applies where, as here, a private organization removes a member even though the removal has no economic impact. The rationale for this argument "is that membership in an association, with its associated privileges, once attained, is a valuable interest which cannot be arbitrarily withdrawn." (*Ezekial v. Winkley* (1977) 20 Cal.3d 267, 273 [142 Cal. Rptr. 418, 572 P.2d 32]; *see* also *Kurz v. Federation of Petanque U.S.A., supra,* 146 Cal.App.4th at pp. 147-148.)

We need not determine whether the common law right to fair procedure applies to appellant's removal from the Committee. Assuming that it does, the Committee complied with fair procedure requirements. At a meeting of the Committee on January 10, 2007, a motion was made to remove appellant on the ground that she had "failed to contribute to the substantial work of the Committee." The motion was in writing and was signed by 22 members of the Committee. A copy of the motion was personally given to appellant, who was present at the meeting.

On February 9, 2007, appellant sent a detailed email to Committee members defending herself against the removal motion. On February 11, 2007, Jenkins sent an email to Committee members setting forth reasons why appellant should be removed from office. The email put appellant on notice as to the

grounds for the charge that she had "failed to contribute to the substantial work of the Committee." Jenkins declared that appellant's "baseless accusations that the Committee Membership is violating the Election[s] Code sabotages the substantial work of the Committee." "A member who, just before the 2006 General Election, writes the [San Luis Obispo] County District Attorney to accuse the Chairwoman and the Committee, of misdemeanor violations of the Election[s] Code in how it defines its membership, is not exercising free speech. The timing of this baseless charge had to be understood by that member as an attack on the Committee's work. That the Committee Chairwoman would have to, as she did, suspend the campaign work for two days right before the General Election to provide the D.A. with all the paperwork previously reviewed by the Committee was completely foreseeable." "Active Sabotage of the conduct of the Democratic Party Campaign is the opposite of contributing to the substantial work of the Committee. The timing of this baseless and fruitless attack was clearly active sabotage." Appellant acknowledges that she received Jenkins's email before the February 13, 2007, meeting regarding her removal.

At the meeting on February 13, 2007, Committee members spoke in favor of and against the motion. Appellant spoke in her own defense. The motion was passed by a two-thirds vote of the Committee. Appellant protested, "alleging that the membership of the Committee is illegal, that bylaws don't allow removal, and the election code doesn't allow removal."

Thus, appellant was afforded the basic requirements of common law fair procedure: "'adequate notice of the "charges" against [her] and a reasonable opportunity to respond.'" (*Rosenblit v. Superior Court, supra,* 231 Cal.App.3d at 1445.) Furthermore, the Committee's actions were "substantively rational," not arbitrary. (*Ibid.*) Nevertheless, appellant contends that she was denied a fair procedure because she "was denied the right to a hearing conducted by impartial decision makers." (**Bold** & capitalization omitted.) Appellant alleges that "a large percentage of the Committee Members present and eligible to vote were her adversaries." These alleged adversaries included 13 members who had signed the motion to remove her and 14 members "whose membership eligibility [appellant] was challenging." But the disqualification of these members would have "stacked the deck" in appellant's favor, shielding her from removal. It also would have nullified the removal clause of the bylaws. The two-thirds vote required for a member's removal cannot be attained if the member's opponents are disqualified from voting. Accordingly, the participation of appellant's alleged adversaries in the voting did not deprive her of common law fair procedure.

VI *Expansion of Committee Membership*

Appellant contends that the bylaws' "expansion of Committee membership to include three classifications not specified in the Elections Code is unlawful." We disagree.

In *Eu* the Supreme Court struck down Elections Code provisions prescribing the composition of state central committees. The court observed that, "by specifying who shall be the members of the parties' official governing bodies, California interferes with the parties' choice of leaders." (*Eu, supra,* 489 U.S. at p. 230.) The Supreme Court concluded that this interference did not serve a compelling state interest because the state had failed to show that it was "necessary to ensure an election that is orderly and fair." (*Id.,* at p. 233.)

(11) To the extent that Elections Code provisions prescribe the composition of Democratic Party county central committees, they also interfere with the parties' choice of leaders. Like the State in *Eu*, appellant has failed to show that this restriction is "necessary to ensure an election that is orderly and fair." (*Eu, supra,* 489 U.S. at p. 233.) "[A] state cannot substitute its judgment for that of the party as to the desirability of a particular party structure, any more than it can tell a party that its proposed communication to party members is unwise. [Citation.]" (*Id.,* at p. 233.)

Appellant argues that "there is a compelling state interest in . . . uniformity between county

committees." But she does not explain why such uniformity is necessary to the integrity of the electoral process. There is no such uniformity between political parties. Section 7850 provides that a Peace and Freedom Party county central committee, "in its sole discretion, may appoint any additional members to the county central committee as it may desire."

Appellant further argues: "The Elections Code restrictions on membership serve the purpose of imposing . . . democratic principals [*sic*] on the composition of county committee membership." "[T]he political organization and operations of the Democratic Party should at least strive to be in fact 'democratic'." As we noted in part II above, the *Eu* court rejected a similar argument "that the challenged laws serve a compelling 'interest in the "democratic management of the political party's internal affairs."'" (*Eu, supra,* 489 U.S. at p. 232.)

(12) Thus, to the extent that Elections Code provisions prescribe the composition of Democratic Party county central committees, they cannot be upheld because they "burden the First Amendment rights of political parties and their members without serving a compelling state interest." (*Eu, supra,* 489 U.S. at p. 233.)

Disposition

The judgment is affirmed. Respondents shall recover their costs on appeal.

Coffee, J., and Perren, J., concurred.

Wilson v. San Luis Obispo County Democratic Central Committee, et al.

B209293

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SIX

2009 Cal. App. LEXIS 1155

June 29, 2009, Filed

OPINION

Filed order modifying opinion, petition for rehearing is denied and certifying opinion for publication. (No change in the judgment).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

GAIL G. WILSON, Petitioner, v. SAN LUIS OBISPO COUNTY DEMOCRATIC CENTRAL COMMITTEE AND STEWART JENKINS, Respondents.	Case No.: CV 070525 RULING AND ORDER DENYING PETITION FOR WRIT OF MANDATE AND PROHIBITION (Filed May 5, 2008)

INTRODUCTION

Petitioner Gail Wilson ("Wilson") brings suit to invalidate her removal as an elected member of the San Luis Obispo County Democratic Central Committee ("Central Committee"). She contends that the Central Committee violated California's Elections Code and that the procedures the Committee used in removing her did not provide due process of law. Among other things, Wilson asks for reinstatement as a Central Committee member and for removal of her successor. She also asks this Court, generally, to circumscribe the procedures and methods by which the Central Committee can elect and remove its members.

On June 14, 2007, Wilson filed her *pro per* petition naming the Central Committee and its recording secretary, Stewart D. Jenkins, Esq.

("Jenkins"), as respondents. On July 13, 2007, the Central Committee and Jenkins filed demurrers. On August 27, 2007, shortly before the demurrer was to be heard (and now with the assistance of counsel), Wilson filed her First Amended Petition for Writ of Mandamus and Prohibition. On October 17, 2007, this Court overruled demurrers by the Central Committee and Jenkins, and set the matter for hearing on the merits.

On December 7, 2007, after briefing and arguments of counsel, the Court announced a tentative decision and stated that it intended to seek comments relative to the legal issues from the California Attorney General, Secretary of State, and Legislative Counsel. The Court also scheduled a further hearing so that the parties could respond to any comments that were received. All three government entities declined to express an opinion as to how this Court should interpret the Election Code or the constitutional issues presented.

On March 13, 2008, the Court heard further argument on the merits of the case and took the matter under submission. Having considered the briefs, arguments, evidence, and requests for judicial notice, the Court's ruling now follows.

FACTS

In the June 6, 2006 primary election, Wilson was automatically elected as a Central Committee Member ("member") because the number of candidates

nominated for election did not exceed the number of candidates to be elected. Pursuant to Elections Code §7228, the names of the nominees were not printed on the ballot, and the San Luis Obispo County Board of Supervisors declared the nominated candidates elected. Wilson later received a certificate of election.

On July 12, 2006, the Central Committee adopted bylaws[1] permitting the removal of members on grounds not specifically listed in Elections Code. More specifically, Article V of the Committee's bylaws was amended to provide that: "Members are expected to be regular in attendance at meetings and regular contributors to the substantial work of the Committee." Article V states that: "Members who are severely deficient in this requirement may be removed according to Article VI and Article IX."

Wilson was critical of these new amendments and made allegations of misconduct by the Central Committee and Jenkins. In November 2006, a few days before the general election, Wilson apparently made a complaint to the District Attorney's office regarding misconduct by the Central Committee and Jenkins.

At the Central Committee's February 13, 2007 meeting, two thirds of the voting members of Central Committee decided to remove Wilson pursuant to

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[1] The By-Laws are attached as Exhibit "D" to the Petition and Exhibit 105 to SLOCDCC's Trial Brief.

Article V of the Bylaws for Wilson's failure to contribute to the substantial work of Central Committee.

DISCUSSION

Wilson claims that Central Committee's membership bylaws violate the Elections Code, and that the Central Committee may not remove members for reasons other than those specifically listed in the Elections Code. She states that the voters of San Luis Obispo County have the right to have elected officials serve their full terms, absent a basis for removal as set forth in the Elections Code. She specifically seeks reinstatement under CCP § 1085, which provides, in pertinent part, as follows:

> A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person,. . . . to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person.

The Central Committee and Jenkins respond that a political party working group such as the Central Committee has associational rights under the First Amendment to control its own membership, as well as the structure which best allows it to pursue its political goals. They contend that neither the Central Committee's membership nor its removal procedures is limited by the applicable provisions of

the Elections Code. Any attempt to do so, they further claim, would violate their First Amendment associational rights.

As the federal district court recently stated in the context of primary elections:

> The Constitution makes no mention of political parties, but they have a unique and protected stature in our constitutional system. The First Amendment right to freedom of association extends to parties and protects their internal affairs from undue government interference. *Nelson v. Dean* (N.D. Fla., 2007) 528 F.Supp.2d 1271, 1277.

See Tashian v. Republican Party of Connecticut (1986) 479 U.S. 208, 224; *Cousins v. Wigoda*, (1975) 419 U.S. 477. The Supreme Court has expressed no toleration for laws that attempt to regulate the internal affairs of political parties while having little direct connection with the election process. *See Democratic Party of the United States v. Wisconsin ex rel. LaFollette* (1981) 450 U.S. 107, 121-22 & n. 22 (freedom to associate "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only") (citing Laurence Tribe, American Constitutional Law 791 (1978) ("Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.")).

In *Eu v. San Francisco County Democratic Central Committee* (1989) 489 U.S. 214, the Supreme Court addressed California's restrictions on the organization and composition of official governing bodies, the limits on the term of office for state central committee chairs, and the requirement that the chair rotate between residents of northern and southern California. In concluding that the State of California could "not dictate decisions on either party membership or leadership," the Supreme Court invalidated these provisions of the California Elections Code on the basis that they burdened the First Amendment rights of political parties and their members without serving a compelling state interest. With respect to the specific restrictions at issue, the Supreme Court stated:

> Each restriction thus limits a political party's discretion in how to organize itself, conduct its affairs, and select its leaders. Indeed, the associational rights at stake are much stronger than those we credited in *Tashjian*. There, we found that a party's right to free association embraces a right to allow registered voters who are not party members to vote in the party's primary. Here, party members do not seek to associate with nonparty members, but only with one another in freely choosing their party leaders. (*Eu*, 489 U.S. at 230-231)
>
> Because the challenged laws burden the associational rights of political parties and their members, the question is whether they

> serve a compelling state interest. A State indisputably has a compelling interest in preserving the integrity of its election process. (*Rosario v. Rockefeller* (1973) 410 U.S. 752, 761) Toward that end, a State may enact laws that interfere with a party's internal affairs when necessary to ensure that elections are fair and honest. *Storer v. Brown*, 415 U.S., at 730. . . . None of these restrictions, however, involved direct regulation of a party's leaders. Rather, the infringement on the associational rights of the parties and their members was the indirect consequence of laws necessary to the successful completion of a party's external responsibilities in ensuring the order and fairness of elections. (*Eu*, 489 U.S. at 231-232)

The Supreme Court concluded that the State of California had failed to provide a compelling state interest to justify regulation of a party's internal affairs:

> In sum, a State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is orderly and fair. Because California has made no such showing here, the challenged laws cannot be upheld . . . For the reasons stated above, we hold that the challenged California election laws burden the First Amendment rights of political parties and their members without serving a compelling state interest. Accordingly, the

judgment of the Court of Appeals is *Affirmed*. (*Eu*, 489 U.S. at 233)

The issues presented here are very similar to those issues before the Supreme Court in *Eu*. With respect to removal of a member, Election Code §7213 states that any member "who misses more than three consecutive regularly called meetings may be removed by a vote of the committee concerned, unless his or her absence is caused by illness or temporary absence from the county on the date of the meeting." Election Code §7215 states that any member who "affiliates with, or registers as a member of another party, who publicly advocates that the voters should not vote for the nominee of this party for any office, or who gives support or avows a preference for a candidate of another party or candidate who is opposed to a candidate nominated by this party" may be removed from office. Election Code §7212 would appear to limit the circumstances by which vacancies can be created and filled.

The Central Committee bylaws are admittedly broader than the Election Code provisions because they permit removal of any member who does not contribute to the "substantial work" of the Committee, even if that member was in regular attendance and always supported the political nominees of the party. Yet sections 7213 and 7215 of the Elections Code plainly "[limit the Central Committee's] discretion in how to organize itself, conduct its affairs, and select its leaders." *Eu, supra* at 230-231. These provisions burden the associational rights of the

Central Committee and cannot be upheld absent a compelling state interest.

Wilsons urges that a compelling state interest exists here because she is an elected member, and because her removal compromised a fair and honest election. However, Wilson's removal had nothing to do with the honesty or integrity of the election process. She was seated, sworn, and began to perform the functions of her office. While it is true that removal proceedings were begun after only a period of months in office, the temporal proximity between the election and the removal motion does not convert an internal party problem into a flawed election process.

There is no evidence that any part of the election process involving Wilson was flawed, unfair or dishonest. She took the oath of office, was seated as a member, and began participating in the affairs of the Central Committee. She was later removed because of her allegedly-substandard performance. It simply cannot be said that the State of California has a compelling state interest in this issue simply because Wilson was an elected member. Her removal had no connection with the election process itself. *Compare Burdick v. Takushi* (1992) 504 U.S. 428, 434 (upholding a state statute banning write-in votes based on a compelling state interest); *Green Party of California v. Jones* (1995) 31 Cal.App.4th 747, 761 (finding that State has a compelling interest in the uniformity of ballot procedures to justify reasonable restrictions).

The lack of a compelling state interest is also illustrated by the inconsistent manner in which the Elections Code treats county central committees and statewide committees. For example, the provisions pertaining to the Peace and Freedom Party specifically authorize removal for violating the bylaws or Constitution of the County committee (Election Code §7855), whereas the provisions pertaining to the Republican Party central committees allow removal only for four unexcused absences. *See* Elections Code §7411. With respect to statewide party committees, Election Code §§7150 through 7165 (which address membership and removal on the Democratic State Central committee) were previously matched with roughly similar provisions addressing membership and removal on the Republican State Central Committee. *See* Election Code §§7350 through 7363. On July 12, 2007, however, the provisions pertaining to the Republican Party structures were repealed or substantially replaced by the legislature with terms that provide substantially more discretion to the Republican Party, with respect to membership, methods of election, terms of office, quorum requirements and other matters. *See* Assembly Bill 965; Election Code §§7350 and 7352 (as amended January 1, 2008). It is difficult for this Court to ascertain any compelling state interest in mandating dissimilar internal operating procedures for different political parties.

The lack of any compelling state interest does not end the inquiry because this Court's duty is to

construe the Elections Code, if possible, in a reasonable matter that avoids the constitutional question and upholds the legislation. *In re Smith* (2008) 42 Cal.4th 1251, 1269; *LaRouche v. Fowler* (D.D.C.1999) 77 F.Supp.2d 80, 89-90. With this mandate in mind, it would appear that the provisions of the Elections Code pertaining to internal operating procedures can be upheld as no more than default structures or voluntary guidelines for political leaders to use in operating their committees. *See LaRouche,* 77 F.Supp.2d at 89-90 (guided by the principle that statutes must be construed so as to avoid constitutional questions, court holds that preclearance voting requirement does not apply to political party rules, thus avoiding First Amendment issues and saving statute from constitutional infirmity). However, the parties must be free to adopt whatever internal provisions they choose, so long as those provisions do not directly compromise or affect the integrity of the elections process.

Wilson also requests that this Court invalidate the Central Committee's method for appointing members. Elections Code §§ 7206 and 7207 state that the County Central Committee shall include specified individuals to serve as *ex officio* members. As stated, Article III of the Bylaws sets forth the membership of the committee. The Central Committee has expanded its membership to include (1) Chairs of the Assembly District Committees; (2) members of the State Democratic Central Committee; and (3) presidents of local Democratic clubs. Wilson argues that this

expansion of membership is in violation of the Elections Code. For reasons already stated, however, the political parties must, under the Constitution, be free to adopt their own methods for appointing members free from state regulation, and the applicable provisions of the Elections Code must be seen as voluntary rather than mandatory. *Eu v. San Francisco County Democratic Central Committee* 489 U.S. at 230-231; *LaRouche*, 77 F.Supp.2d at 89-90.[2]

Wilson lastly argues that her due process rights were violated. However, the minutes of the January 10, 2007 meeting indicate that a motion to remove Wilson was made and, pursuant to Central Committee's Bylaws, presented to Wilson. The motion was then put on hold until the February 13, 2007 meeting. On February 9, 2007, prior to the meeting, Wilson provided a detailed e-mail to all Committee members explaining her position on the issues. *See* Exhibit 111 to the Central Committee's Answer. At the February 13, 2007 meeting, there was a detailed discussion regarding the removal of Wilson in which multiple members spoke in favor and against Wilson's removal. *See* Exhibit "F" to the Petition. At this meeting Wilson defended her actions and expressed vehement opposition to her removal. Wilson clearly

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[2] The Central Committee previously obtained an opinion from the Legislative Counsel of California, attached as Exhibit 101 to SLOCDCC's Answer, which concludes that Central Committee may include among its members persons other than those specified by the Elections Code.

was afforded adequate notice and a reasonable opportunity to respond. *Applebaum v. Board of Directors* (1980) 104 Cal.App.3d 648, 657.[3]

CONCLUSION

For the reasons stated, the pertinent provisions of California's Elections Code cannot be considered the exclusive means by which members can be removed or appointed. Therefore, Wilson is not entitled to reinstatement as a Central Committee member or to the removal of her successor. The procedures surrounding Wilson's removal did not contravene due process of law. Further, the Court will not circumscribe the procedures and methods by which the Central Committee can appoint or remove its members. Accordingly, the petition for a writ of mandate is DENIED. It is so ORDERED.

DATED: May 5, 2008

/s/ Charles S. Crandall
CHARLES S. CRANDALL
Judge of the Superior Court

CSC/lk

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[3] Even if Jenkins had a personal axe to grind, his participation in the vote to remove Wilson is not by itself a violation of her due process, because the facts do not show a foreclosure of fairness as a practical or legal matter. *Rhee v. El Camino Hospital Dist.* (1988) 201 Cal.App.3d 477, 490.

GAIL G. WILSON v. SAN LUIS OBISPO COUNTY DEMOCRATIC CENTRAL COMMITTEE

S175348

SUPREME COURT OF CALIFORNIA

2009 Cal. LEXIS 10673

October 14, 2009, Filed

OPINION

Petition for review denied.

California Elections Code provides:[1]

§ 309. "Committee"

"Committee," as used in Article 1 (commencing with Section 20200) of Chapter 3 of Division 20, means any person or combination of persons who, directly or indirectly, receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of one or more candidates, or the passage, or defeat of any measure, and who is required to file campaign reports or statements under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

Democratic Party[2]

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[1] As pointed out in the Court of Appeal Decision at footnote 2 (Appendix 1), in 1994, after the *Eu* decision, the entire California Elections Code was repealed and reenacted.

[2] The California Elections Code provides for the formation and regulation of the elections of a county committee of the Democratic Party (sections 7200 et seq.), the Republican Party (sections 7400 et seq.), the American Independent Party (sections 7600 et seq.) and the Peace and Freedom Party (sections 7800 et seq.). The regulations for each party are very similar. The focus of this Petition is on the provisions regarding the Democratic County Central Committee.

§ 7200. Number of members; County of less than five Assembly districts; County of eighth class; Reapportionment

In each county containing less than five Assembly districts, a county committee shall be elected by supervisor districts, and the number to be elected from any supervisor district shall be determined as follows: There shall be taken the number of votes cast in the supervisor district at the last gubernatorial election for that party's candidate for Governor, or, if the party had no candidate for Governor, for the candidate of the party voted on throughout the state who received the greatest number of votes and who was the candidate of that party alone. This number shall be divided by one-twentieth of the number of votes cast in that county for Governor or, where the party had no candidate for Governor, for the candidate mentioned above. The integer next larger than the quotient obtained by that division shall constitute the number of members of the committee to be elected by that party in that supervisor district.

The committees in counties containing less than five Assembly districts shall be composed of not less than 21 members. If the procedure outlined above would result in less than 21 members being elected for any committee, the number of votes cast for this party's candidate in each supervisor district shall be divided by an amount sufficiently smaller than one-twentieth of the votes cast for Governor in that county as to give a membership in the committee equal to or the nearest amount which is greater than 21 members.

In a county of the eighth class as defined in Section 28029 of the Government Code, the county central committee by resolution may provide for the election of 25 central committee members to represent 25 individual central committee districts. Each member shall reside in the district he or she represents, but shall be elected at large within the Assembly district in which the county central committee district he or she represents is located.

The county central committee shall reapportion itself at least every 10 years, prior to the June primary election of that year. Each district shall be apportioned on the basis of the number of registered Democrats for the June primary in each even-numbered year, with no more than a 10-percent deviation from the average. Each district shall be compact, contiguous, and utilize any natural and neighborhood boundaries. The district boundaries shall not cut across any precinct district's lines as drawn by the elections official for the last general or consolidated election.

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§ 7201. Number of members in county of fifth class

Notwithstanding any other provision of law, in a county of the fifth class as defined in Section 28026 of the Government Code, the elected members of the county central committee shall be elected by Assembly districts and shall consist of six members elected from each Assembly district, whether wholly

or partly within the county, provided each such member is a resident of the county and of the Assembly district which the member represents. Only a person who is a resident of the county may vote for a candidate for membership to the county central committee and may vote only for candidates seeking to represent the Assembly district in which the voter resides.

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§ 7202. Number of members in county containing more than four and less than twenty Assembly districts

In each county containing more than four and less than 20 Assembly districts, a county central committee shall be elected from Assembly districts and shall consist of six members elected from each Assembly district.

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§ 7203. Number of members in county of twenty or more Assembly districts

In each county containing 20 or more Assembly districts a county central committee shall consist of seven members elected from each Assembly district contained either wholly or partially within the county. In an Assembly district that lies only partially within a county containing 20 or more Assembly districts, the seven members shall be elected from that portion of the Assembly district contained within the county.

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§ 7205. Representation of individual central committee districts; Reapportionment

Notwithstanding this article, each county central committee by resolution may provide for the election of all or a portion of central committee members to represent individual central committee districts. The member shall reside in the district he or she represents but shall be elected at large within the Assembly district in which the county central committee district he or she represents is located.

The county central committee shall reapportion itself at least every 10 years, prior to the June primary election of that year. Each district shall be apportioned on the basis of the number of registered Democrats for the June primary in each even-numbered year, with no more than a 10-percent deviation from the average. Each district shall be compact, contiguous, and utilize any natural and neighborhood boundaries. The district boundaries shall not cut across any district lines of a precinct as drawn by the election's official for the last general or consolidated election.

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§ 7206. Nominees and officeholders as ex officio members

In each county the nominee of this party for Senator or the incumbent Senator, the nominees of this party for the Assembly, and any person elected to either the Senate or Assembly at a special election to fill a

vacancy in that house, and the nominee of this party for Representative in Congress, and any person elected at a special election to fill a vacancy in the House of Representatives, shall be ex officio members of this committee. If the person elected from one party at the special election for an Assembly or Senate seat, or for the House of Representatives, shall be other than the nominee of that party for the same office at the prior election, the ex officio membership of the nominee shall expire immediately upon certification by the Secretary of State of the election. Ex officio members shall be entitled to all the rights and privileges, including the right to vote, and shall have the same standing in every way as other members of this committee, except they shall not be entitled to a ballot designation of incumbent upon seeking election to this committee in the next direct primary.

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§ 7207. Specified incumbents or nominees as ex officio members

The incumbent or nominee of each of the following offices shall be an ex officio member of the committee in the county in which he or she resides:

(a) Governor.

(b) Lieutenant Governor.

(c) Secretary of State.

(d) Controller.

(e) Treasurer.

(f) Attorney General.

(g) Member of the State Board of Equalization.

(h) United States Senator from California.

His or her rights and privileges shall be the same as those prescribed for other ex officio members in Section 7206.

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§ 7208. Appointment of alternate

A committee may authorize any member of that committee, whether elected or ex officio, to appoint an alternate if a member desires to appoint an alternate. An incumbent Member of the Senate or Assembly at the time of the meeting of the committee may appoint an alternate member without authorization from that committee, if the member desires to appoint an alternate.

That alternate member shall have the right to vote only with the written authorization of the member who appointed him or her. An alternate member of a county central committee shall be subject to the rules and regulations of the committee.

An alternate member must meet the same qualifications as the regular member and may vote only in the absence of the member who appointed him or her.

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§ 7209. Eligibility for appointment or election

A person shall not be eligible for appointment or election to a committee who is not registered as affiliated with this party at the time of his or her appointment or election.

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§ 7210. Member to take oath or affirmation

Each member of a committee, whether elected to the committee or appointed to fill a vacancy, before he or she enters upon the duties of his office, shall take and subscribe the oath or affirmation set forth in Section 3 of Article XX of the Constitution.

The oath or affirmation required by this section may be taken before any officer authorized to administer oaths and no fee shall be charged by any person before whom the oath is taken or subscribed.

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§ 7212. Vacancies

In the event of the appointment or election to a committee of an ineligible person, or whenever any member of the committee dies, resigns or becomes incapacitated to act, or removes from the jurisdiction of the committee, or ceases to be a member of this party, a vacancy exists which shall be filled by appointment by the committee in which the ineligibility or vacancy occurs. A vacancy shall also exist on a

committee when a member is removed from the committee pursuant to Section 7213 or 7215.

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§ 7213. Removal of member for absence from meetings

Any member of a committee, other than an ex officio member, who misses more than three consecutive regularly called meetings may be removed by a vote of the committee concerned, unless his or her absence is caused by illness or temporary absence from the county on the date of the meeting.

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§ 7214. Change of residence from district

The removal of residence by an elected or appointed member of a committee from the Assembly district or supervisor district from which he or she has been elected or appointed a member of that committee shall constitute his or her automatic resignation from the committee.

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§ 7215. Removal of member for affiliation or support of another party

A committee may remove any member, other than an ex officio member, who during his or her term of membership affiliates with, or registers as a member of another party, who publicly advocates that the voters should not vote for the nominee of this party

for any office, or who gives support or avows a preference for a candidate of another party or candidate who is opposed to a candidate nominated by this party.

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§ 7225. Election in each county

At every direct primary election a county central committee shall be elected in each county.

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§ 7226. Number of members allotted to each district

The elections official, no later than January 31 preceding the direct primary, shall compute the number of members of the committee allotted to each Assembly district or supervisor district, as the case may be, pursuant to this article.

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§ 7228. Number of candidates not exceeding number to be elected

If the elections official, on the 73rd day prior to the direct primary election, finds that the number of candidates nominated for election to a committee from an Assembly or supervisorial district does not exceed the number of candidates to be elected from that Assembly or supervisorial district, the designation of the office and the names of the candidates shall not be printed on this party's ballot in the

Assembly or supervisorial district, unless there is filed with the elections official, not later than 20 days after the final date for filing nomination papers for the positions, a petition indicating that a write-in campaign will be conducted for the office and signed by 25 registered voters affiliated with the political party involved. In lieu thereof, the board of supervisors shall declare elected the candidates who have been nominated, and those candidates shall be entitled to receive certificates of election in the same manner as other candidates elected to a committee.

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§ 7240. Committee in charge of party campaign

A committee shall have charge of the party campaign under general direction of the state central committee or of the executive committee selected by the state central committee.

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§ 7241. Rules and regulations of committee

A committee may make rules and regulations providing:

(a) How officers of the committee may be removed.

(b) How meetings may be called, and any provisions so made shall supersede anything in this chapter to the contrary.

(c) Whether or not proxies may be used and the conditions under which they may be used.

Any rule adopted prior to statutory authorization by any committee by majority vote of the members elected to the committee is hereby validated and made of the same effect as if subsequently adopted.

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§ 7242. Other duties and services of committees

The committees shall perform any other duties and services for this political party as seem to be for the benefit of the party. They shall continue to function and exist until the election at the succeeding direct primary and qualification of the members of the new committees.

Cal. Const. Art. II, § 5 provides:

§ 5. Primary elections

(a) The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

(b) A political party that participated in a primary election for a partisan office has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates.

Cal. Const., Art. XX, § 3 provides:

§ 3. Oath of office

Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the

overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows:

and that during such time as I hold the office of _____ (name of office)

I will not advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means."

And no other oath, declaration, or test, shall be required as a qualification for any public office or employment.

"Public officer and employee" includes every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing.

FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

Religious and political freedom. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

Sec. 2. [Representatives – Power to reduce apportionment.]

Representatives shall be apportioned among the several States according to their respective numbers,

counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.